

### SUPPORT FOR THE AMENDMENT

Support for the amendment to claims 1-5 and 11-27 is found on page 5, lines 10-13 of the specification. Support for claims 28 and 29 is found on page 5, lines 10-13 of the specification. No new matter would be added to this application by entry of this amendment.

Upon entry of this amendment, claims 1-5 and 11-29 will now be active in this application.

### REQUEST FOR RECONSIDERATION

The present invention is directed to a method of treating hair.

Applicants wish to thank examiner's Gollamudi and Hartley for the helpful and courteous discussion held with their U.S. representative on August 12, 2004. At that time, Applicants' U.S. representative argued that Reid et al. failed to describe a hair conditioning method and that the nit visualization dyes of Reid et al. were fundamentally inconsistent with the hair conditioning method as claimed and therefore the composition of Reide et al was outside of the scope of the claims. Applicants' U.S. representative further argued that Komori et al failed to describe the use of a composition which was limited in terms of each of 0.5 to 25 wt. % of at least one oil agent and 0 to 15 % wt.% of water. The following is intended to expand upon the discussion with the examiners.

Improvements in hair feel and stylability are generally sought. Conventional methods of applying hair treatments to shampooed wet hair are not always entirely effective. Effective methods would be welcome.

The present invention addresses this issue by providing a method of conditioning hair by applying a hair treatment composition consisting essentially of 0.5 to 25 % by weight of at least one oil agent and a solvent, and having a water content of 0 to 15 % by weight to dry

hair, letting stand, then washing away. Applicants have discovered that such a method is effective in conditioning hair. Such a method is nowhere disclosed in the cited prior art of record.

The rejections of Claims 1, 11, 13, 15-16, 20-21 and 23 under 35 U.S.C. § 102(a)(e) over Reid et al. U.S. 5,972,987 are respectfully traversed.

Reid et al. fails to disclose or suggest a hair conditioning method using a composition consisting essentially of at least one oil agent and a solvent, which is applied to dry hair and washed away.

Reid et al. is directed to a method of removing lice eggs from infested hair by applying colored dyes which have a preferential adsorption for the chitin surface of a nit or the binding cement (column 4, lines 6-9). In order to facilitate distribution of the dye throughout the hair, the dye containing composition may also contain a lubricant, such as "Silwets, lanolin or mineral oil, to facilitate movement of the comb through the subject's hair (column 7, lines 1-4). Example 1, illustrates a composition containing Eosin Y as a dye, ethanol as a solvent and isopropyl myristate as a lubricant (column 8, lines 25-38). Accordingly, the reference describes a method in which a dye suitable for nit visualization is delivered to the hair, in order to assist in the removal of lice eggs, wherein a lubricant composition may also be used.

In contrast, the present invention is directed to a method of conditioning hair comprising applying to dry hair, a hair treatment composition consisting essentially of 0.5-25 % by weight of at least one oil agent and a solvent, the composition having a water content of 0-15% by weight. Applicants note that the claims have been amended to recite that the method is for "conditioning hair". As the cited reference is directed to a method of nit visualization there is no motivation to condition hair, nor any expectation of conditioning hair as again, the disclosed method is simply directed to a method of visualizing nits in hair.

Moreover, the transitional phrase of "consists essentially of" 0.5 to 25 % by weight of oil agent, and solvent would excludes the presence of the brightly colored dye of the cited reference as the presence of such a dye is inconsistent with the basic and novel characteristics of the claimed invention in which hair is being treated.

The present method is a method of conditioning hair while the cited reference is directed to a method of facilitating the removal of lice. The dye of Reid et al. is sufficient to impart suitable **contrast** between the nits and the background scalp and hair colors. As such the dye used in this reference must have a higher affinity for the surface of the nit than that of the human scalp or hair in order to provide the necessary contrast which is sought. Quite simply if the dye used did not have a higher affinity for the nit surface than the scalp or hair that the treatment would actually reduce nit visualization, reducing the contrast between the nit and the scalp and hair. The presence of a nit visualization dye is completely inconsistent with the claimed method of conditioning hair, as the imparting of a color during such a conditioning process is not typically desired. There is no suggestion of treating hair with a composition consisting essentially of at least one oil agent and a solvent.

The presence of a dye for visualization of lice products is completely inconsistent with a method of treating hair as inclusion of a dye to facilitate visualization of lice products is not intended to treat hair, but rather to treat the surface of lice products. As the cited prior art fails to disclose or suggest a composition consisting essentially of 0.5 to 25 % by weight of an oil agent and a solvent, the claimed invention clearly is not anticipated by the cited references.

Therefore, the claimed invention is both novel and not obvious over the cited reference as the reference fails to disclose a composition in the absence of a nit visualization dye and the would have been no expectation of conditioning hair as a result of the process of Reide et al., as the reference simply describes a method in which hair nits are visualized.

There is no suggestion or expectation of conditioning hair. Withdrawal of the rejections under 35 U.S.C. 102(a) and (e) are respectfully requested.

The rejections of claims 1, 3 and 11-27 under 35 U.S.C. 103(a) over Komori et al. U.S. 5,342,611 alone, and in view of Okumura et al. U.S. 4,402,936 and of claims 2, and 4-5 under 35 U.S.C. 103(a) over Komori et al. U.S. 5,342,611 alone, and in view of Okumura et al. U.S. 4,402,936 and further view of Priest et al. U.S. 4,296,763 are respectfully traversed.

A hair conditioning method in which the hair treatment composition consists essentially of 0.5 to 25 % by weight of at least one oil agent and a solvent, **and** having a water content of 0 to 15 % by weight, is nowhere disclosed or suggested in the cited references.

Komori et al. has been cited by the examiner as describing a hair treatment composition as claimed. This reference describes a hair cleansing composition comprising (a) a surfactant, (b) an alcohol, (c) 0.1 to 25 % of water, and (d) 20 to 98 wt.% of a liquid oil (see abstract) but fails to describe a hair treatment composition as claimed.. While the ranges for the amount of water and the amount of oil individually overlap the claimed ranges of 0 to 15 wt. % and 0.5 to 25 wt.%, there is no suggestion in the reference to apply a composition which meets each of the claim limitations of 1) 0.5 to 25 % by weight of at least one oil agent and 2) a water content of 0 to 15 % by weight, at the same time.

Applicants note that the claimed amount of oil is at the low end of the disclosed range of Komori et al.. The preferred amount of oil in the reference is 50 to 98 wt. % (column 3, lines 17-20), an amount which is outside the claimed range. In the examples, either the amount of oil is in excess of the claimed 0.5 to 25 wt.% or the amount of water is in excess of the claimed 0 to 15 wt.%. In none of the examples are both of these claim limitations met. As such the claimed method is clearly not made obvious by this reference.

In addition, there is clearly no motivation to use a composition as claim by applying to dry hair, followed, by washing away, as in a pre-shampoo composition.

As noted the by the examiner, Okumura et al. and Horin et al. describe pre-shampoo-type treatments. The examiner has noted that the typical use of pre-shampoo treatments is by applying to dry hair (page 5, lines 4-5 of outstanding official action). However, Applicants note that these two references which describe use of pre-shampoo compositions, describe compositions other than that claimed. For example, example 3 of Okumura et al. describes a pre-shampoo composition which contains 96 wt. % of water and no oil component. The reference describes that the compositions are formulated to be "the balance of the composition of the present invention can be water." (column 3, lines 53-55) Therefore this suggests that there is no motivation to use a composition containing only 0 to 15 wt. % of water as a pre-shampoo composition.

Horin et al also cited by the examiner as describing a pre-shampoo composition. However, this reference describes that an oil-in-water pre-shampoo composition must contain more than 25 wt. % of an aqueous phase and that it is critical for the water content to be at least 35 % by weight, preferably at least 40 % by weight. Such a critical amount is far in excess of the claimed 0 to 15 wt. %. As such, the claimed method of conditioning hair which is applied to dry hair, as would a pre-shampoo composition, would not have been obvious as the cited references describe pre-shampoo compositions which contain an amount of water far in excess of the claimed limited amount of water. The lack of the amount of water essentially described in the cited art precludes a conclusion that the claimed invention would have been obvious. For this reason, the claimed invention would not have been obvious from these references. Withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

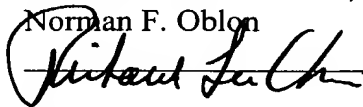
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Reply to Office Action of July 27, 2004

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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MAIER & NEUSTADT, P.C.

Norman F. Oblon

A handwritten signature in dark ink, appearing to read "Richard L. Chinn", is written over a horizontal line.

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